

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

RULING ON DEFENDANT'S MOTION FOR APPOINTMENT OF COUNSEL

HAIGHT, Senior District Judge:

Defendant Milvio Duarte is presently incarcerated in a federal prison, following Duarte's conviction after jury trial on a several-count indictment in this Court. One count of conviction was for violating the firearms statute, 18 U.S.C. § 924(c), which was predicated in part on conspiracy to commit murder in violation of 18 U.S.C. § 1959(a)(5). Duarte's direct appeal and an earlier habeas motion under 28 U.S.C. § 2255 were rejected.

Thereafter the Supreme Court decided *Johnson v. United States*, 135 S. Ct. 2551 (2015), and *United States v. Davis*, 139 S. Ct. 2319 (2019). *Davis* held that parts of § 924(c) were unconstitutional. Duarte contends that his § 924(c) conviction is no longer valid after *Johnson* and *Davis*.

Duarte wishes to assert that contention in the form of a § 2255 motion for habeas corpus relief. Given this case's procedural history, Duarte was required by 28 U.S.C. § 2244(b)(3)(A) to move in the Second Circuit for an order authorizing him to file a successive § 2255 motion.

Duarte made that motion. By order dated May 12, 2020, the Second Circuit granted

Duarte's motion for leave to file a successive § 2255 motion, and transferred the case "to the district court." The case was thereupon placed on my calendar, because I was the trial judge.

Duarte now moves for the appointment of counsel to assist him in the intended § 2255 motion. This Court's power to make that appointment is conferred by 18 U.S.C. § 3006A(a)(2)(B). The circumstances of Duarte's incarceration and the legal complexities of his claim for habeas relief combine to support the determination, which I make pursuant to that statute, that the interests of justice require the appointment of an attorney to represent Duarte in this action.

The Court hereby appoints for that purpose the Federal Defenders of New York, whose office is 52 Duane Street, New York, N.Y. This is a skilled professional office, whose attorneys have had recent and effective participation in habeas litigation arising out of the Supreme Court's retroactive constitutional decision in *Davis*.

The Court directs that Duarte's motion under § 2255, together with a brief and any other supporting documents, be filed on or before August 21, 2020. That time may be enlarged on a showing of good cause.

It is SO ORDERED.

Dated: New Haven, Connecticut
July 16, 2020

s/ CHARLES S. HAIGHT, JR.
CHARLES S. HAIGHT, JR.
Senior United States District Judge